

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**March 6, 2007**

**The Rhode Island Ethics Commission held its 4th meeting of 2007 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, March 6, 2007, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara Binder, Vice Chair   James C. Segovis  
George E. Weavill, Jr., Secretary   Frederick K. Butler  
Richard E. Kirby   Ross Cheit  
James V. Murray**

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason M. Gramitt and Dianne L. Leyden; and Commission Investigators Steven T. Cross, Peter J. Mancini and Michael Douglas.**

**At approximately 9:15 a.m., the Vice Chair opened the meeting. The first order of business was to approve the minutes of the Open**

**Session held on February 20, 2007. Upon motion made by Commissioner Murray and duly seconded by Commissioner Segovis, it was unanimously**

**VOTED: To approve the minutes of the Open Session held on February 20, 2007.**

**ABSTENTION: Ross Cheit.**

**At approximately 9:18 a.m., upon motion made by Commissioner Segovis and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4), to wit:**

**a.) Motion to approve minutes of Executive Session held on February 20, 2007.**

**b.) In re: Donald L. Carcieri,  
Complaint No. 2006-9**

**c.) Motion to return to Open Session.**

**The Commission reconvened in Open Session at approximately 10:05 a.m. The Vice Chair reported that the Commission voted to approve**

minutes of the Executive Session held on February 20, 2007 and approved an Informal Resolution and Settlement in Complaint No. 2006-9, In re: Donald L. Carcieri.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Edward F. Lavallee, the City Manager for the City of Newport. The petitioner was present with City Solicitor Joseph Nicholson. Staff Attorney Leyden presented the Commission Staff recommendation. Mr. Nicholson informed that the seven officers came from a candidate field of 315. In response to Commissioner Weavill, he acknowledged that the process narrowed the field down but the candidate must make it through the police academy. In further response, Mr. Lavallee stated that a pass or fail grade is under the academy's jurisdiction and, upon graduation, there is a one year probationary period.

Mr. Nicholson advised that he envisioned the same process being utilized in the future for matters regarding discipline or promotion. He noted that he has experience in these areas, having held his position for 22 years and previously acting as City Manager for a year. Commissioner Weavill commented that the Commission recently changed its regulations to avoid these types of situations and he is uncomfortable with it. In response to Commissioner Kirby,

**Mr. Nicholson clarified that the one year probationary period involved no vested rights that would fall under the Police Officers Bill of Rights. Upon motion made by Commissioner Butler and duly seconded by Commissioner Kirby, there was discussion.**

**Commissioner Weavill stated his discomfort with the situation, noting that there are future issues implicated beyond the appointment. Commissioner Kirby agreed with his position, but suggested that since the Solicitor answers to the Council he would not be constrained if a disciplinary issue arose during the one year period or going forward. He noted that objective criteria are used for applying for the academy. Vice Chair Binder stated that the Commission put an escape valve in the nepotism regulation to address these situations. Upon the original motion, it was**

**VOTED: To issue an advisory opinion, attached hereto, to Edward F. Lavalley, the City Manager for the City of Newport.**

**AYES: Barbara Binder, James C. Segovis, Frederick K. Butler, Richard E. Kirby, Ross Cheit and James V. Murray.**

**NOES: George E. Weavill, Jr.**

**The next advisory opinion was that of Timothy F. Kane, Esq., the Solicitor for the Town of Smithfield. Commissioner Segovis disclosed that he is a Smithfield resident but that he has no**

relationship to the petitioner. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was present. Commissioner Cheit inquired what common financial objective would make them business associates. Commissioner Kirby commented that they shared the objective of keeping the doors open for business and suggested that there could be joint and several liability on the lease. Mr. Kane replied that his father owns the building and he leases space. He clarified that he admits that they are business associates because of their common objective to keep their office expenses down.

In response to Commissioner Weavill, Mr. Kane stated that he does not supervise the Assistant Solicitors, who are appointed by the Council to handle prosecutions and represent the Planning and Zoning Boards. Commissioner Weavill questioned whether the petitioner might participate in litigation or a decision regarding litigation involving those boards. Mr. Kane replied that he has two carry over matters of Zoning Board appeals from the prior administration. In response to Commissioner Kirby, he noted that he also works with the Town Manager.

In response to Vice Chair Binder, the petitioner stated that, although he serves as the head of the Legal Department, the other attorneys are separately appointed and serve at the Council's pleasure. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Kirby, there was discussion. Commissioner Kirby

stated that the request asks the Commission to issue an opinion regarding the conduct of his business associates. Staff Attorney Leyden advised that section 5(f) would require the petitioner's recusal. Commissioner Murray requested that the cautionary language on page 4 include specific reference to the Code of Professional Conduct. Commissioners Weavill and Kirby amended their original motion to reflect inclusion of that reference. Upon the amended motion, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Timothy F. Kane, Esq., the Solicitor for the Town of Smithfield.

The next advisory opinion was that of Calvin A. Ellis, a member of the Exeter Town Council. Staff Attorney Leyden advised that the petitioner was unable to attend the meeting. Vice Chair Binder questioned whether overturning the ordinance would make the litigation moot. Commissioner Kirby inquired whether the petitioner is an abutter or a member of the public who did not agree with the ordinance. He suggested that it might not be problematic if he were the latter. Staff Attorney Leyden stated that the matter could be continued so that more information may be presented. She clarified that the petitioner represented that he would not participate until he received the opinion. Commissioner Segovis noted that he may have been elected to advocate for that position, but his vote could make the issue moot. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Kirby, it was unanimously

**VOTED: To table the advisory opinion request to obtain more information.**

**The next advisory opinion was that of Jeffrey T. Britt, a former Commissioner of the State Investment Commission. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was not present. Commissioner Segovis stated that he accepts that he cannot lobby the State Investment Commission, but questioned if there are any proposals that he worked on before the legislature. He also questioned the exact nature of what the petitioner wants to do and how it relates back to his former body's work. Commissioner Kirby stated that he assumes his work for the State Investment Commission was part-time and questioned what else he did. He suggested asking the petitioner to attend to provide more information. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To table the advisory opinion request to obtain more information.**

**The next order of business was the Director's Report. At Executive Director Willever's request, Commissioner Segovis introduced Dr. William T. O'Hara. Executive Director Willever reported that there are five complaints and fifteen advisory opinions pending.**

**The next order of business was New Business. There being none, at approximately 10:47 a.m., upon motion made by Commissioner Cheit and duly seconded by Commissioner Kirby, it was unanimously**

**VOTED: To adjourn the meeting.**

**Respectfully submitted,**

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**George E. Weavill, Jr.**  
**Secretary**